

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JEFFERY JOHNSON,

Petitioner,

v.

DISTRICT COURT OF PAYNE CO., et al.,

Respondents.

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Case No. CIV-14-331-F

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, has filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. Pursuant to an order entered by United States District Judge Stephen P. Friot, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

On April 11, 2014, the undersigned reviewed the pleadings filed by Petitioner and entered an order requiring Petitioner to either pay the \$5.00 filing fee or submit a request to proceed *In Forma Pauperis*. ECF No. 4. The undersigned gave Petitioner until May 2, 2014, to cure these deficiencies. On April 16, 2014, Petitioner filed an IFP application and the undersigned issued an order identifying deficiencies in the application and giving Petitioner until May 8, 2014 to cure the deficiencies. ECF Nos. 5 and 6.

To date, the filing fee remains unpaid and Petitioner has not complied with the Court's orders by submitting the required account information, but has submitted letters advising that his girlfriend agreed to pay the filing fee and that he has already provided

the required *in forma pauperis* information in case number CIV-14-307-D, filed in the Western District of Oklahoma. *See* ECF Nos. 7, 8 and 10.

The undersigned finds that Petitioner's abject failure to comply with the Court's orders, combined with the Court's inherent authority to manage and control its caseload, warrants a dismissal of this action without prejudice. *Brandenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980) (*per curiam*).

RECOMMENDATION

Based on the foregoing findings, it is recommended that this action be **DISMISSED WITHOUT PREJUDICE** for Petitioner's failure to pay the filing fee, failure to properly apply to proceed without paying the filing fee, and failure to comply with this Court's orders. Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **June 2, 2014**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Petitioner is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED on May 14, 2014.


SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE